

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION**

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|---|---|---------------------------------------|
| DYLAN J. TREVINO, A Minor, Suing |) | |
| By his Next Friend and Guardian, DIANA |) | |
| TREVINO, and DIANA TREVINO, |) | |
| Individually, |) | |
| |) | |
| Plaintiffs, |) | |
| |) | Civil Action No. 1:10-cv-00115 |
| vs. |) | JUDGE HAYNES |
| |) | |
| KINDERHOOK CAPITAL FUND II, L.P., |) | JURY DEMANDED |
| |) | |
| Defendant. |) | |

PLAINTIFFS' MOTION FOR LEAVE TO FILE AMENDED COMPLAINT

COME NOW Plaintiffs, Dylan J. Trevino, A Minor, Suing By his Next Friend and Guardian, Diana Trevino, and Diana Trevino, Individually, by and through their counsel of record, and pursuant to Rule 15(a) of the Federal Rules of Civil Procedure and the Scheduling Order governing this case [Docket No. 29], hereby requests leave of this Court to amend their Complaint, and in support of their motion state the following:

I. BACKGROUND

1. This action was originally filed one year ago seeking to recover damages¹ under the Tennessee Products Liability Act, Tenn. Code Ann. § 29-28-101, *et seq.*, against the world's largest manufacturer of plastic gasoline containers, Blitz U.S.A., Inc., for failing to include a safety device, generally referred to as a "flame arrestor," in the plastic gasoline container model that exploded and severely burned the minor plaintiff, Dylan Trevino, on December 23, 2009. [Docket No. 1].

¹ Plaintiffs also sought recovery under claims of Negligence, Negligent Misrepresentation, and Recklessness.

2. On September 9, 2011, Plaintiffs amended their original complaint to include the five corporate affiliates that own, directly or indirectly, Blitz U.S.A., Inc. [Docket No. 46].

3. On November 9, 2011, Blitz U.S.A., Inc. and its five corporate affiliates filed for Chapter 11 Bankruptcy in the United States Bankruptcy Court for the District of Delaware, save and except their ultimate parent and majority shareholder-Kinderhook Capital Fund II, L.P. [Docket No. 91].

4. On November 29, 2011, Plaintiffs' product liability action against Blitz U.S.A., Inc. and its corporate affiliates was transferred to the United States Bankruptcy Court for the District of Delaware. [Docket No. 94].²

II. Amendments to Complaint

Plaintiffs' propose to add additional factual information recently made available by the former Blitz Defendants Chapter 11 filings in the United States Bankruptcy Court for the District of Delaware relating to Count Seven of Plaintiffs' First Amended Complaint for Damages. Plaintiffs also seek to add a new Defendant – Kinderhook Industries, LLC.

The amendments proposed by Plaintiffs will not unduly prejudice Defendant Kinderhook Capital Fund II, L.P. and will not unduly delay this case.

III. Conclusion

Plaintiffs seek to file their Second Amended Complaint for Damages, attached hereto as Exhibit "A," and respectfully request leave of this Court to file such Second Amended Complaint for Damages.

DATED this 9th day of January, 2012.

² See also Adversary Proceeding #: 11-53892-PJW, U.S. Bankruptcy Court for the District of Delaware.

By: /s/ Hank Anderson
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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that on this the 9th day of January, 2012, a true and correct copy of the above and forgoing, has been sent to the following counsel of record by means indicated below:

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/s/ Hank Anderson
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